TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 743

A. A. LEWIS AND COMPANY, MAIN AND LINCOLN AVENUE SUBDIVISION, TRUST No. 1523, ET AL., PETITIONERS,

vs.

COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 18, 1937.

CERTIORARI GRANTED MARCH 29, 1937.

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1 A. A. Lewis and Company, Main and Lincoln Ave. Subdivision, Trust #1523; Central Republic Bank and Trust Company, as Successor Trustee by Consolidation,
Petitioner,
vs.
Commissioner of Internal Revenue,
Respondent.
} Docket No. 75010

Appearances:

For Taxpayer: Raymond A. Duggan, Franz W. Castle, Esq.

For Commissioner: B. M. Coon, Esq., John W. Smith, Esq.

DOCKET ENTRIES.

1934

Mar. 5—Petition received and filed. Taxpayer notified. (Fee paid).

Mar. 5—Copy of petition served on General Counsel.

Apr. 11—Answer filed by General Counsel.

Apr. 21—Copy of answer served on taxpayer.

May 11—Motion to place on Day Calendar week of 6/18/34 filed by taxpayer. 5-14-34 Denied.

Aug. 22—Hearing set Oct. 2, 1934.

Sept. 24—Depositions of James F. Buys filed (1).

Sept. 24—Depositions of A. A. Lewis filed (1).

Oct. 2—Hearing had before Mr. Arundell—Div. 7 on merits. Depositions of Buys and Lewis admitted in evidence, appearance of Franz W. Castle, Esq., pet's brief due 11/2/34. Commissioner's brief Nov. 17-34. Pet's reply Nov. 27-34.

Oct. 12—Transcript of hearing Oct. 2-34 filed.

Nov. 1—Brief and statement of facts filed by taxpayer. 11/2/34 copy served.

Nov. 15—Brief filed by General Counsel.

Dec. 10—Order extending time to Dec. 20-1934 to file petitioner's reply brief, entered.

Dec. 12—Reply brief filed by taxpayer. 12/12/34 copy served.

1935

June 14—Memorandum Opinion rendered—Mr. Arundell.

—Div. 7. Decision will be entered under Rule 50.
July 1—Notice of settlement filed by General Counsel.
July 3—Hearing set July 24-35 on settlement.
July 15—Consent to settlement filed by taxpayer.
July 18—Decision entered—Mr. Arundell, Div. 7.
Oct. 14—Petition for review by United States Circuit Court of Appeals, 7th Circuit, with assignments of error filed by General Counsel.
Oct. 18—Proof of service filed.
2 Dec. 4—Motion for extension to 4/1/36 to complete and transmit record filed by General Counsel.
Dec. 4—Order enlarging time to April 1-36 to prepare and deliver record, entered.

1936

Mar. 24—Motion for extension of time to June 1, 1936 to transmit and complete record, filed by General Counsel.
Mar. 24—Order enlarging time to 6-1-36 for preparation and delivery of record, entered.
May 25—Motion for extension to 8/1/36 to prepare and transmit record, filed by General Counsel.
May 25—Order enlarging time to 8/1/36 to prepare and deliver record, entered.
June 26—Agreed statement of evidence lodged.
June 26—Praecipe with proof of service thereon filed.
July 11—Agreed statement of evidence approved and ordered filed.

1934. 3 UNITED STATES BOARD OF TAX APPEALS.

A. A. Lewis and Company, Main and Lincoln Avenue Subdivision, Trust #1523, Central Republic Trust Company, formerly named Central Republic Bank and Trust Company, as Successor Trustee by Consolidation,
Petitioner,
vs.
Commissioner of Internal Revenue,
Respondent.
} Docket No. 75010

PETITION.

Filed Mar. 5, 1934.

The above named petitioner hereby petitions for a redeter-

mination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency, dated January 3, 1934, IT:AR:B-4, and as a basis for this proceeding alleges as follows:

1. The petitioner is successor trustee to the Chicago Trust Company under its Trust No. 1523; with its principal office at 203 South La Salle Street, Chicago, Illinois.

2. The notice of deficiency (a copy of which is attached hereto and marked Exhibit "A") was mailed to the petitioner on January 3, 1934.

3. The taxes in controversy are income taxes for the year 1931, amounting to $512.30.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) Classification of this trust as an association for income tax purposes.

(b) Use of an improper accounting method to reflect taxable income.

5. The facts upon which the petitioner relies as a basis for this proceeding are as follows:

(a) An interpretation of the Trust & Selling Agreement dated December 12, 1925, governing the creation and continuation of this Trust will show that it is a pure security trust, not doing business in quasi-corporate form, and with only one residuary beneficiary who owned the property and received the net proceeds after payment of selling commissions to the named selling agent.

(b) The individual let cost recovery basis of accounting followed by the Commissioner in determining taxable income for 1931 and prior years is improper and erroneous. The deduction of commissions paid the selling agent from invested cost of each lot (as a receipt) and also as a deductible selling expense results in a distortion of taxable income and/or losses in the first years of selling operations. The large losses resulting in the years in which sales were made cannot be carried forward long enough, for income tax purposes, to be absorbed by subsequent receipts. A fictitious taxable profit, on an overall basis and particularly for 1931, is thus pro-

4 duced, with resulting injustice to the taxpayer. An individual lot cost recovery basis in which net receipts to the trust (segregating selling agent's share as his separate property, as directly provided for in the Trust & Selling Agreement) are applied against individual lot costs should be followed in determining true taxable income. This pro-

cedure can be consistently and uniformly followed in all years and particularly in the year 1931 now in controversy.

Wherefore the petitioners pray that this Board may hear the proceeding and determine that this subdivision trust is not taxable as an association, but only as a security trust the net income of which goes to the sole residuary beneficiary; and that a proper individual lot cost recovery basis of accounting for profits from lot sales be used by the Commissioner; and that such other relief be granted as seems proper and just under the circumstances, including the rescinding of the deficiency assessment hereinbefore indicated.

RAYMOND A. DUGGAN,
Counsel for Petitioners,
221 North La Salle St.,
Chicago, Illinois.

State of Illinois }
County of Cook } ss.

O. C. BARTON, being duly sworn, says that he is Assistant Secretary of Central Republic Trust Company, formerly named Central Republic Bank and Trust Company, a corporation, successor trustee to Chicago Trust Company under Trust No. 1523 by consolidation; that he is duly authorized to verify the foregoing petition; that he has read the foregoing petition and is familiar with the statement contained therein; and that the facts stated are true, except as to those facts stated to be upon information and belief, and those facts he believes to be true.

O. C. BARTON.

Subscribed and sworn to before me this Second day of March, A. D., 1934.

L. P. BIEBESHEIMER,
Notary Public.

(Seal)

5 "EXHIBIT A".

(Copy)

622M NP-2-1 act

TREASURY DEPARTMENT
Washington

Jan. 3, 1934.

A. A. Lewis and Company
Main and Lincoln Avenue Subdivision Trust #1523,
c/o Central Republic Bank and Trust Company, Trustee,
208 South La Salle Street,
Chicago, Illinois.

Sirs:

You are advised that the determination of your income tax liability for the years 1931 discloses a deficiency of $512.30 as shown in the statement attached.

In accordance with section 272 of the Revenue Act of 1928, notice is hereby given of the deficiency mentioned. Within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of the deficiency.

However, If You Do Not Desire to Petition, you are requested to execute the enclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this form will expedite the closing of your returns, by permitting an early assessment of any deficiency and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the form, or on the date assessment is made, whichever is earlier; Whereas If This Form Is Not Filed, interest at the rate of 6% per annum will accumulate.

Respectfully,
(Signed) GUY T. HELVERING,
Commissioner.
By (Signed) CHAS. T. RUSSELL,
Deputy Commissioner.

Enclosures:
Form 870
Statement

5½ Statement.

IT:AR:D-4
GDK-60D

In re: A. A. Lewis and Company,
Main and Lincoln Avenue Subdivision Trust #1523,
c/o Central Republic Bank and Trust Company, Trustee,
208 South La Salle Street,
Chicago, Illinois.

Income Tax Liability.

Year	Income Tax Liability	Income Tax Assessed	Deficiency
1931	$512.30	None	$512.30

Reference is made to office letter dated November 20, 1933, advising you of the approval of the report submitted by the internal revenue agent in charge at Chicago, Illinois, a copy of which was transmitted to you under date of September 19, 1933.

Records of the Bureau do not indicate that a reply has been received to the above-mentioned letter, and, therefore, since you do not desire to waive your right to the final notice of deficiency, this final notice is issued at this time.

Further reference is made to the report of the internal revenue agent in charge at Chicago, Illinois covering the calendar year 1931, and to your protest submitted to that official under date of October 4, 1933.

Careful consideration has been accorded your protest in connection with the agent's findings and the report on the conference held with your representative in the office of the agent in charge. The adjustments recommended by the agent as a result of the conference have been approved by this office.

Your contention that the revenue agent was in error in recommending a deficiency of $512.30 for the year 1931, based upon a net income of $7,269.17, since due to the large number of unsold lots the venture as a whole would result in no profit and that the stockholders would not receive back the capital invested, has been denied for the following reasons:

Based upon the evidence in file, your organization has been held to be an association taxable as a corporation instead of a common law trust, the income of which is taxable to the beneficiaries, since the beneficiaries of your organization have the management and control of the trust property and the activi-

ties of the trustee are not restricted to the collection of income and the distribution of the same to the beneficiaries of the trust. The "cost recovery" basis was used in computing the profit on the sale of lots, which method has been consistently used for the years 1926 to 1930, inclusive. While your contention in regard to the venture being a failure and that the stockholders would not receive back the capital invested is probably true, the profit realized on the sale of individual lots must be reported at the time realized regardless of the final outcome of the entire venture. This is in accordance with article 61, Regulations 74.

6 Net income as disclosed by return filed on form 1041 — None

Add:	
Profit on lots sold	$ 7,269.17
Corrected net income	$7,269.17
Less:	
Exemption	3,000.00
Balance subject to tax at 12%	$4,269.17
Amount of tax at 12%	$ 512.30
Tax previously assessed	None
Additional Tax to be assessed	$ 512.30

7 UNITED STATES BOARD OF TAX APPEALS.

(Caption—75010)

ANSWER.

Filed Apr. 11, 1934.

The Commissioner of Internal Revenue, by his attorney, Robert H. Jackson, General Counsel, Bureau of Internal Revenue, for answer to the petition filed in the above-entitled appeal, admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of petition.

2. Admits the allegations contained in paragraph 2 of petition.

3. Admits that the taxes are income taxes for the year 1931, but denies that the amount in controversy is $512.30.

4. Denies that the respondent erred in the manner alleged in subparagraphs (a) and (b) of paragraph 4 of the petition.

5. Denies the allegations of fact contained in subparagraphs (a) and (b) of paragraph 5 of the petition.

Denies generally and specifically each and every allegation contained in the petition not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that petitioner's appeal be denied.

(Signed) ROBERT H. JACKSON,
General Counsel, Bureau of Internal Revenue.

Of Counsel:
PAUL D. PAGE, JR.,
Special Attorney, Bureau of Internal Revenue.

ikc 4-9-34

19 IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Guy T. Helvering, Commissioner of Internal Revenue, *Petitioner,* *vs.* A. A. Lewis & Co., Main & Lincoln Avenues Subdivision Trust No. 1523, Central Republic Trust Company, formerly named Central Republic Bank and Trust Company as successor Trustee by consolidation, *Respondent.*	BTA Docket No. 75010.

STATEMENT OF EVIDENCE.

Filed June 26, 1936.

Filed July 11, 1936.

The following is a statement of the evidence in narrative form in the above-entitled cause. This cause came on for hearing before the Honorable C. Rogers Arundell, Member of the United States Board of Tax Appeals on October 2, 1934. Franz W. Castle appeared for the petitioner and Robert H. Jackson, Assistant General Counsel for the Bureau of Internal Revenue, as attorney for the Commissioner of Internal Revenue.

Counsel for petitioner offered in evidence in behalf of the petitioner the deposition of J. F. BUYS, taken in due form,

in Chicago, Illinois, on September 19, 1934. There being no objection by respondent the same was received by the Board and filed as evidence in the case.

Therein the witness' testimony is as follows:

Direct Examination by Franz W. Castle.

I am employed by the Central Republic Trust Company in charge of the operation of the subdivision trusts. For a number of years last past I have been conversant with the handling of Trust No. 1523 in the said company. The document which you now show me is the declaration of trust and trust agreement in Trust No. 1523. So far as our records show there was no amended or supplemental trust in connection with this trust. The papers about which I have testified are a part of our files in that trust. (Dep. 2.)

Thereupon the petitioner offered in evidence the said declaration of trust dated December 12, 1925, known as Trust No. 1523, marked PETITIONER'S EXHIBIT NO. 1, and the same was admitted in evidence and attached to the deposition, in words and figures following: (Insert)

The Central Republic Trust Company is the successor to the Chicago Trust Company and is now acting as successor to this trust by virtue of the consolidation. I was not connected with the Chicago Trust Company when this trust was created. I became connected with that company February 28, 1926, and from that date down to the present time I have been conversant with the handling of this trust. The trustee and its successor since the formation of the trust have collected the funds due from the contract purchasers and paid the commissions as called for in the trust agreement, and distributed funds to the beneficiaries. Yes, the trustees made collections under the contracts. It paid the commission to the sales agent as called for in the agreement and it held the balance of the funds for the benefit of the beneficiary.

At the inception of this trust there was one beneficiary, Minerva Melidones. Yes, there has been a change of beneficial ownership by assignment by Minerva Melidones to Benjamin Schwartz of her beneficial interest in the trust. The estate of Mr. Schwartz is the sole beneficiary. The records do not show that there has been at any time any other beneficiary than those which I testified to.

The Chicago Trust Company and its successor the Central Republic Trust Co. in connection with the sale of the property

mentioned in the trust agreement had no duties in connection with the sale of the property except to collect on contracts submitted to us by A. A. Lewis for collection.

Prior to the submission of the contracts for the sale of
21 lots, we did not check the purchasers of the lots. The only check made was to see that the minimum sales price was in accordance with the trust agreement and that the contracts were in accordance with the trust agreement. I did not, to my knowledge, perform any duties than those shown in the trust agreement.

Mr. Perkins: No cross examination. (Dep. 4.)

It was agreed between counsel that a certified copy of the trust and sales agreement, without a plat, might be substituted for the original copy and be marked as Petitioner's Exhibit No. 1.

Thereupon, counsel for the petitioner offered in evidence on behalf of the petitioner the deposition of ALBERT A. LEWIS, taken in due form in Chicago, Illinois, on September 19, 1934, which, in the absence of objection by respondent, was received by the Board and filed as evidence in the case.

The deponent testified as follows:

Direct Examination by Mr. Franz W. Castle.

My name is ALBERT A. LEWIS. I have been engaged in the real estate business for 15 years; subdivision and land. I have operated during the last ten years chiefly in the city of Chicago and suburbs, particularly, Niles Center. As a subdivider I maintained an organization. After 1925 I handled about 35 different subdivisions. I handled a subdivision in Niles Center in which the name Melidones was mentioned. I am not sure whether it was Minerva or her husband, who, I understand, died. (Dep. 7.)

(Counsel requested witness to examine the trust agreement and state whether or not he was the A. A. Lewis mentioned therein.)

Witness states that the document appeared to be a trust agreement to which his name appeared as a party. As I
22 remember my interest in that trust was a sales agency contract. I mean we had a contract to sell the property and receive from the proceeds of the sale a commission therefor. I remember the people who originally owned the property but I can't recall their names. There were several peo-

ple who owned it. The purpose of putting title in the Chicago Trust Company as trustee was so that the title to the property would remain in a neutral person and be vested with the trustee so that contract purchasers who purchased the various lots out of the subdivision would be able to look to the trustee upon the completion of their payments for the purchase of the various lots for the title to the lots which they purchased. In my experiences as a subdivider practically all of that method was usually adopted for carrying the title during the tenancy of the trust. Practically all the subdivisions in Niles Center were placed in trust with trust companies. The chief reason, generally speaking, for that method of carrying the title was that the purchasers of individual lots can eventually secure their title. There may be other reasons however. (Dep. 8.)

No, I do not remember what the amount of my commission was in this particular subdivision. (Petitioner's counsel handed Exhibit No. 1 to the witness and requested him to examine it, which he did.) Well this recites a commission of 33⅓% but it may not have actually been that much because 33⅓% was payable only, if, as, and when actual collections were made.

No, I don't think we had any other interest in that trust except as selling agent under the trust agreement, Exhibit No. 1. Personally I did not as sales agent sell any of the lots in this trust. Yes, through my organization. The purchasers were procured by various methods, one of which might be through advertising and securing of inquiries, and through salesmen. The qualification of purchasers were their
23 ability to make the necessary initial payment. An office of the Company decided that at the time. No, the Chicago Trust Company had nothing to do with the selection of purchasers or their eligibility. No, the beneficiaries of the trust did not have anything to do with the selection or eligibility of lot purchasers except that a lot could not be sold unless it was stated in the purchase contract that a given percentage of the purchase price was paid. The contract with individual lot purchasers were turned over to the trustee for collection. I do not know that they raised any question as to the financial standing or eligibility of any contract purchaser.

No Cross-Examination. (Dep. 9-10.)

After the reading of the deposition, counsel for petitioner reoffered the above described Petitioner's Exhibit No. 1,

which, in the absence of objection from respondent, was admitted in the record.

Both sides thereupon rested, and the Board declared the record closed.

The foregoing evidence is all of the material evidence adduced at the hearing before the Board of Tax Appeals, and the same is approved by the undersigned, Herman Oliphant, General Counsel for the Department of the Treasury, as attorney for the Commissioner of Internal Revenue.

(Signed) HERMAN OLIPHANT
Herman Oliphant,
General Counsel for the Department of the Treasury, Attorney for Petitioner on Review.

24 The foregoing is all of the material evidence adduced at the hearing before the Board of Tax Appeals, and the same is approved by the undersigned, as attorney for the respondent on review.

(Sgd) WM. C. O'CONNELL,
Receiver.
(Sgd) FRANZ W. CASTLE,
Attorney for Respondent on Review.

The foregoing is all of the material evidence adduced at the hearing and in order that the same may be preserved and made a part of the record, this statement of evidence is duly approved and settled this 11th day of July, 1936.

(S) C. ROGERS ARUNDELL,
Member, United States Board of Tax Appeals.

DMC/mer 3-4-36.

25 (Stamp) Received Sep 24 1934 U. S. Board of Tax Appeals.

PETITIONER'S EXHIBIT 1.

We Hereby Certify that the attached three documents are true and correct copies of the following described instruments, to-wit: Declaration of Trust dated December 12, 1925, numbered 1523, executed by Chicago Trust Company, as Trustee, and by Minerva S. Melidones and A. A. Lewis; Agreement dated December 12, 1925, made and entered into by Minerva S. Melidones, Albert A. Lewis and Chicago Trust Company, as Trustee under the provisions of said trust agree-

ment dated December 12, 1925, and known as Trust No. 1523, without copies of exhibits referred to in said agreement; Agreement dated December 12, 1925, by and between Minerva S. Melidones, Albert A. Lewis and Chicago Trust Company, as Trustee, under said trust, amending the aforesaid agreement dated December 12, 1925.

Dated September 20th, 1934.

CENTRAL REPUBLIC TRUST COMPANY,
By C. V. BARTON,
Assistant Secretary.

26 DECLARATION OF TRUST.

This Trust Agreement, dated this 12th day of December, 1925, and known as Trust Number 1523, is to certify that the Chicago Trust Company, an Illinois banking corporation, as Trustee hereunder, is about to take title to the following described real estate in Cook County, Illinois, to wit:

Lots One (1) to One Hundred Eight (108) inclusive, in Main Street and Lincoln Avenue Subdivision of Lots Seventeen (17) and Eighteen (18) and of part of Lot Nineteen (19) in Owner's Subdivision of the West half of Section Twenty-one (21), Township Forty-one (41) North, Range Thirteen (13), East of the Third Principal Meridian;

Also

A strip of land one rod in width lying East of and adjoining the West 820.2 feet of the South Forty (40) rods of the Northeast quarter (NE¼) of the Southwest quarter (SW¼) of Section Twenty-one (21) aforesaid, conveyed to the Village of Niles Center by deed dated November 26, 1892, and recorded December 9, 1903, as Document 3477596, in Book 8378, page 462, and that when it has taken the title thereto, or to any other real estate deeded to it as Trustee hereunder, it will hold it and the proceeds, profits, and avails thereof, if any, which may come to its hands by direction of the beneficiary or beneficiaries or by the specific terms hereof, in trust for the ultimate use and benefit of the following named persons according to the respective interests herein set out, to wit:

Minerva S. Melidones, and
A. A. Lewis, as shown by the attached agreement.

It Is Agreed and Understood between the parties hereto, and by any person or persons who may become entitled to

any interest under this trust, that the interest of any beneficiary hereunder shall consist solely of a power of direction to deal with the title to said property and the right to receive the proceeds from rentals or from sales of said premises, and that such right in the avails of said property shall be deemed to be personal property, and may be assigned and transferred as such; that in case of the death of any beneficiary hereunder during the existence of this trust, his or her right and interest hereunder shall, except as herein otherwise specifically provided, pass to his or her executor or administrator, and not to his or her heirs at law; and that no beneficiary now has, and that no beneficiary hereunder at any time shall have, any right, title or interest in or to any portion of said real estate as such, but only an interest in the proceeds as aforesaid; it being the intention of this instrument to vest the full legal and equitable title to said premises in said Trustee. No assignment of an interest hereunder shall be binding on the Trustee until the original or a duplicate copy of the assignment, in such form as the Trustee may approve, is lodged with it.

Certificates evidencing the interests of the beneficiaries
27 may be issued by the Trustee in such form as it may approve, in which event, an assignment of an interest shall be valid only upon the surrender therewith of such certificate, and the assignee shall not be entitled to recognition as a beneficiary hereunder until he has so surrendered such original certificate to the Trustee with a proper assignment and until a new certificate has been issued to him.

In case said Trustee shall make any advances of money hereunder on account of this trust or shall be made a party to any litigation on account of holding title to said real estate or in connection with this trust, or in case said Chicago Trust Company, either personally or as trustee, shall be compelled to pay any sum of money on account of this trust, or any property thereof, whether on account of breach of contract, injury to person or property, fines or penalties under any law or otherwise, the beneficiaries hereunder do hereby jointly and severally agree as follows: (1) that they will forthwith on demand pay the said Trustee, with interest thereon at the rate of 7% per annum all such disbursements or advances or payments made by said Trustee, together with its expenses, including reasonable attorney fees; (2) that the said Trustee shall be under no duty to convey or otherwise deal with any property or funds at any time held hereunder

until all of said disbursements, payments, advances and expenses made or incurred by said Trustee shall have been fully paid, together with 7% interest thereon as aforesaid; (3) that in case of nonpayment within sixty days after demand said Trustee may sell sufficient property to pay the debt and hand over any surplus to the beneficiaries. However, nothing herein contained shall be construed as requiring the Trustee to prosecute or defend any legal proceedings involving this trust or any interest thereunder unless it shall be furnished with funds sufficient therefor or be satisfactorily indemnified in respect thereto.

It shall not be the duty of the purchaser of any part of said premises to see to the application of the purchase money paid therefor; nor shall any one who may deal with said Trustee be privileged or required to inquire into the necessity or expediency of any act of said Trustee or of the provisions of this instrument.

This trust agreement shall not be placed on record in the Recorder's Office of the county in which the land is situated, or elsewhere, and the recording of the same shall not be considered as notice of the rights of any person hereunder, derogatory to the title of said Trustee.

While the Chicago Trust Company is the sole owner of the real estate referred to herein, and, so far as the public is concerned, has full power to deal with it, it is understood and agreed by the parties hereto and by any person who may hereafter become a party hereto, that said Chicago Trust Company will deal with it only when authorized to do so, in writing, and that it will, on the written direction of

In accordance with the attached agreement.

or on the written direction of such person or persons as may be beneficiary or beneficiaries at the time, make contracts for the sale of, make deeds for, or otherwise deal with the title of said real estate, provided, however, that the Trustee shall not be required without its consent to enter into any personal obligation or liability in dealing with said land or to make itself liable for any damages, costs, expenses, fines or penalties, or to deal with the title so long as any money is due to it hereunder. Otherwise, the Trustee shall not be required to inquire into the propriety of such direction.

28 The beneficiary or beneficiaries hereunder shall have the management and control of said property, and of the selling, renting and handling thereof, and any beneficiary or his agent, shall handle the rents thereof and the

proceeds of any sales of said property, except as herein otherwise expressly provided, and said Trustee shall not be called upon to do anything in the management or control of said property, payment of taxes, assessments, insurance, litigation or otherwise, except on the written direction of the beneficiaries hereunder, and after the payment to it of all money necessary to carry out said instructions. If any property remains in this trust twenty years from this date it shall be sold at public sale by the Trustee on reasonable notice, and the proceeds of the sale shall be divided among those who are entitled thereto under this trust agreement.

In the event that the written direction to deal with the title to any property held hereunder involves the making of a contract or contracts by the Trustee, for the sale of said property, then the Trustee may require that the proceeds of sale be paid to it to be disbursed to the beneficiary or beneficiaries. In the event such contract or contracts would place an obligation upon the Trustee or the trust estate to pay encumbrances or assessments, to furnish local public improvements, to perfect title, or to incur any expense of any kind, in order to fulfill said contract, and the Trustee accepts such direction and acts thereunder, then such direction cannot be revoked, altered, or superseded in any way or in any part, without the Trustee's consent until all such obligations shall be fully paid, performed and satisfied, and the proceeds of such contract or contracts shall be paid to the Trustee. The trustee may apply such proceeds to the payment and satisfaction of all obligations of the Trustee, of this trust estate and of the beneficiary or beneficiaries to the Trustee hereunder, before distribution thereof shall be made to the beneficiary or beneficiaries, unless otherwise provided hereinafter or in such direction.

~~*Said Chicago Trust Company shall have and receive for its services the sum of $ ..... for accepting the trust and taking the title; $ ..... per year for holding title after the ..... day of ....., 19....., so long as any property remains in this trust; the regular schedule fees for making deeds; and*~~ It shall receive reasonable compensation for any special services rendered by it and its attorneys, solicitors and agents hereunder, or for taking and holding other property hereafter deeded to it hereunder.

In Testimony Whereof, the Chicago Trust Company has caused these presents to be signed by its Vice President, and attested by its Assistant Secretary, and has caused its cor-

porate seal to be hereto attached as and for the act and deed of said corporation, the day and date above written.

CHICAGO TRUST COMPANY,
By W. F. HOPKINS,
Vice President.

(Seal)
Attest:
BURT A. BOWLBY,
Assistant Secretary.

And on said day the said beneficiaries have signed this Declaration of Trust and Trust Agreement in order to signify their assent to the terms hereof.

MINERVA S. MELIDONES (Seal)
5915 N. Paulina
A. A. LEWIS, (Seal)
77 W. Washington.

29 This Agreement, Made and entered into this 12th day of December, A. D. 1925, by and between Minerva S. Melidones, of the City of Chicago, County of Cook, and State of Illinois, party of the first part, Albert A. Lewis, of the City of Chicago, County of Cook and State of Illinois, party of the second part, and Chicago Trust Company, a corporation, of the City of Chicago, County of Cook and State of Illinois, as trustee under the provisions of a trust agreement dated the 12th day of December, A. D. 1925, and known as Trust No. 1523, party of the third part, Witnesseth:

Whereas the party of the first part has on the date of the execution of this agreement caused to be conveyed to the Chicago Trust Company, as trustee under the provisions of a trust agreement dated on the date hereof and known as Trust No. 1523, good title in fee simple to real estate in the Village of Niles Center, County of Cook and State of Illinois, known and described as follows:

Lot Seventeen (17) in Owner's Subdivision of the West half (W½) of Section 21, Township 41 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois, (hereinafter sometimes referred to as Parcel No. 1);

Lot Eighteen (18) (except the South thirty (30) feet thereof) in said Owner's Subdivision (hereinafter sometimes referred to as Parcel No. 2.

That part of the Southeast quarter (SE¼) of the Northwest quarter (NW¼) and of the Northeast quarter (NE¼) of the Southwest quarter (SW¼) of Section 21, Township 41 North, Range 13 East of the Third Principal Meridian, described

as follows: commencing at a point on the South Line of the Northeast quarter (NE¼) of the Southwest quarter (SW¼) of Section 21 aforesaid 7.29 chains West of the Southeast corner thereof; thence running North 19.98 chains to center of highway; thence North 67¾ degrees West along the center of said highway 3.71 chains; thence South parallel to the East line of said quarter section 21.41 chains to the South Line of said Northeast quarter (NE¼) of the Southwest quarter (SW¼) of Section 21 aforesaid; thence East along said South line 3.47 chains to the place of beginning, (excepting from said premises a strip of land one rod in width lying East of and adjoining the West 820.2 feet of the South 40 rods of the Northeast quarter (NE¼) of the Southwest quarter (SW¼) of Section 21 aforesaid, conveyed to the Village of Niles Center by deed dated November 26, 1892, and recorded December 9, 1903, as Document 3477596, in Book 8378, page 462), also a strip of land three feet in width running the entire length of and immediately West of and adjoining that part of the Southeast quarter (SE¼) of the Northwest quarter (NW¼) and of the Northeast quarter (NE¼) of the Southwest quarter (SW¼) of Section 21, Township 41 North, Range 13 East of the Third Principal Meridian, In Cook County, Illinois, described as follows: commencing at a point on the South line of the Northeast quarter (NE¼) of the Southwest quarter (SW¼) of Section 21 aforesaid, 7.29 chains West of the Southeast corner thereof; thence running North 19.98 chains to the center of the highway; thence North 67¾ degrees West along the center of said highway 3.71 chains; thence South parallel to the East line of said quarter section 21.41 chains to the South line of said Northeast quarter (NE¼) of the Southwest quarter (SW¼) of Section 21 aforesaid; thence East along said South line 3.47 chains to the place of beginning, the East line of the land duly conveyed being 21.41 chains in length and the North line being the center line of Miller's Mill Road, in Cook County, Illinois (hereinafter sometimes referred to as Parcel No. 3);

The West 75 feet of Lot Nineteen (19) in said Owner's Subdivision, (hereinafter sometimes referred to as Parcel No. 4);

which said real estate has heretofore been platted and subdivided by the party of the first part into lots, streets and alleys under the name of Main St. and Lincoln Ave. Subdivision of Lots Seventeen (17) and Eighteen (18) and of part of

Lot Nineteen (19) in Owner's Subdivision of the West half (W½) of Section 21, Township Forty-one (41) North, Range Thirteen (13) East of the Third Principal Meridian, in Cook County, Illinois, said plat having been duly recorded in the Recorder's Office of Cook County, Illinois, as Document No. ..... and also registered in the Office of the
31 Registrar of Titles of Cook County, Illinois, as Document No. 26871, and the conveyance of said land has been made to said party of the third part under the legal description of Lots One (1) to One Hundred Eight (108), both inclusive, of said subdivision;

And, Whereas, the said party of the first part is desirous of securing the services of the party of the second part in selling the lots in said subdivision, and the party of the second part desires to sell said lots for the party of the first part;

And, Whereas, it is also desired that the party of the first part shall, if possible, acquire the title to the strip of land approximately 16.5 feet in width, which is excepted from the premises conveyed by the party of the first part to the party of the third part referred to as Parcel No. 3 aforesaid, and which strip is described as follows:

A strip of land one rod in width lying East of and adjoining the West 820.2 feet of the South 40 rods of the Northeast quarter (NE¼) of the Southwest quarter (SW¼) of Section 21 aforesaid conveyed to the Village of Niles Center by deed dated November 26, 1892, and recorded December 9, 1903, as Document 3477596, in Book 8378, page 462;

and upon so acquiring title shall convey or cause to be conveyed said strip of land to the party of the third part, as trustee as aforesaid, and shall cause the party of the third part to resubdivide said strip with Lots Fifty-six (56) to Sixty-five (65) both inclusive, Seventy-two (72) to Eighty-one (81) both inclusive, Eighty-two (82) to Ninety-one (91) both inclusive, and Ninety-eight (98) to One Hundred Seven (107) both inclusive, or some of them, so that the portions of said strip falling within Madison Street, Monroe
32 Street and Cleveland Street shown in the plat of said Main St. and Lincoln Ave. Subdivision aforesaid, and the part falling within north and south boundary lines of the alleys between the said streets shall become parts of said streets and alleys, and the portions of the said strip falling between two of the lots aforesaid shall become parts of lots in said subdivision or resubdivision of said lots.

Now, Therefore, in consideration of the respective covenants and agreements of the parties hereto hereinafter set forth, it is hereby covenanted and agreed by the parties hereto as follows:

Article I.

The party of the first part does hereby constitute the party of the second part, his heirs, executors, administrators, successors and assigns, exclusive selling agents of said property and of said 16.5 foot strip of land, if acquired by the party of the first part, and/or conveyed to party of the third part, during the term of this agreement, subject to the terms and conditions hereinafter set forth.

Article II.

The Chicago Trust Company, as such trustee under the provisions of the trust agreement hereinbefore referred to, does hereby declare and agree that it does and will henceforth hold title to said premises, and in the event that said 16.5 foot strip of land is conveyed to it that it will thenceforth hold title to said strip of land, in trust, for the uses and purposes and subject to the terms, covenants and conditions of said trust agreement as amended by this indenture.

33 Article III.

Section 1. The party of the first part shall forthwith apply for an owner's guarantee policy to the Chicago Title and Trust Company for Lots One (1) to One Hundred Eight (108) in said subdivision aforesaid, and shall, within a reasonable time, deliver to the party of the second part an owner's guarantee policy of the Chicago Title and Trust Company, in its usual form, guaranteeing the title of the party of the third part, as trustee, as aforesaid, against loss or damage to the extent of One Hundred Thousand Dollars ($100,000.00), by reasons of defects in or liens upon its title, as trustee as aforesaid, subject only to the following matters:

(1) Rights or claims of parties in possession not shown of record and questions of survey.

(2) Mechanic's liens, if any, where no notice thereof appears of record.

(3) Special taxes or special assessments, if any, which have not been confirmed by a court of record.

(4) Installments of special assessments falling due after

the date hereof for improvements heretofore completed, and special taxes or special assessments for improvements not yet completed.

(5) General taxes for the year 1925.

(6) Trust deed dated July 15, 1925 and recorded as Document No. 8985626 to Stephen S. Losch, trustee, conveying Parcel No. 4 aforesaid, securing a note for Fifteen Thousand Dollars ($15,000.00) of even date therewith, due July 15, 1929, with interest at six per cent (6%) per annum, payable semi-annually, and evidenced by eight (8) interest notes, said trust deed containing a releasing clause providing for the release of Lots 15, 16, 17, 18, 40, 41, 42, 43, 67, 68, 69, 70, 93, 94, 95, 96 and 108, in said subdivision, upon the payment of certain sums in said trust deed specified.

(7) Trust deed dated June 11, 1925, and recorded as Document 8949641 to Fernando J. LeBau, trustee, conveying Parcel No. 3 aforesaid, securing a note for Thirty-two Thousand Five Hundred Dollars ($32,500.00) of even date there-
34 with, due on or before June 11, 1929, with interest at six per cent. (6%) payable and evidenced by eight (8) interest notes, and containing a releasing clause providing for the release of lots 9, 10, 11, 12, 13, 14, 20, 21, 22, 23, 35, 36, 37, 38, 45, 46, 47, 48, 64, 65, 72, 73, 90, 91, 98 and 99 from the lien of said trust deed upon the payment of certain sums in said trust deed specified.

(8) Trust deed dated July 11, 1925, recorded in the Recorder's Office of Cook County, Illinois, as Document 8975189, registered in the Office of the Registrar of Titles in Cook County, Illinois, as Document 264245 to Titus L. Thelin, Trustee, conveying Parcels Nos. 1 and 2 aforesaid, securing three (3) notes of even date therewith, two for Ten Thousand Dollars ($10,000.00) each, and one for Twelve Thousand Dollars ($12,000.00), due one, two and three and one-half years after their date respectively, with interest at six per cent. (6%) per annum, payable semi-annually, said interest being evidenced by interest coupons and containing a release clause providing for the release of lots 1 to 8 both inclusive, 24 to 34 both inclusive, 49 to 62 both inclusive, 75 to 88 both inclusive, and 101 to 107 both inclusive, in said subdivision, upon the payment of certain sums in said trust deed specified.

Section 2. Said party of the first part shall also cause to be released from the lien of said trust deeds those lots or portions thereof in the subdivision aforesaid which are included in the land conveyed by any of said trust deeds, and

for which lots or portions thereof no provision is contained in the trust deed covering the same for the release thereof upon the payment of a specified sum.

Section 3. The party of the first part shall also, within a reasonable time after acquiring title to said 16.5 foot strip of land, cause the trustee herein to resubdivide the same with Lots 56 to 81 both inclusive, and 82 to 91 both inclusive and 98 to 107, both inclusive, or some of them, in such manner that that portion of said strip falling within Madison Street, Monroe Street and Cleveland Street and the North and South boundary lines, as extended of the two alleys between said streets, shall become a part respectively of said streets and alleys, and the remainder of said strip shall become a part of the lots in said resubdivision, provided that said resubdivision, if desired, may be made of said strip with only a portion of the lots above specified, and the said party of the first part shall further furnish, within a reasonable time, a further continuation of said guarantee policy showing good title in said trustee to said resubdivision, subject only to the matters Nos. 1 to 5, tabulated and enumerated in Section first of this article aforesaid. The sales price of any lot in said resubdivision shall be that proportion of the previous sales price which the frontage bears to the frontage of the old lot which is a part of the new one.

Section 4. Whenever lots in said subdivision and/or in said resubdivision aggregating a gross purchase price of One Hundred Thousand Dollars ($100,000.00), as hereinafter provided, have been sold, the party of the first part shall increase the title insurance an additional One Hundred Thousand Dollars ($100,000.00); and when Two Hundred Thousand Dollars ($200.000.00) shall have been sold, he shall increase it an additional One Hundred Thousand Dollars ($100,000.00), and when Three Hundred Thousand Dollars ($300,000.00) shall have been sold, he shall increase it to an amount equal to the gross sales price of all of the lots in said subdivision and resubdivision, as shown in the sales plat hereinafter referred to.

Article IV.

Section 1. The party of the first part hereby constitutes, makes and appoints the said party of the second part as manager of the trust created by said deed in trust and trust agreement aforesaid, irrevocably for a term as hereinafter provided, and said party of the first part hereby delegates to the manager such powers and duties in con-

nection with the administration of said trust as may be necessary to facilitate the sale of said land in accordance with the terms of this agreement. The party of the second part hereby agrees to exercise reasonable diligence in effecting sales of the property hereinbefore described, and will make an effort to secure purchasers for all of said property in as short a period as possible. The party of the second part shall not, however, be required to commence making sales of Lots 1 to 55 both inclusive, Lots 66 to 71 both inclusive, 92 to 97 both inclusive and 108 (said lots being hereinafter referred to as "lots comprising Section 1") until the party of the first part has complied with the provisions of Article III, Sections 1 and 2 aforesaid, nor as to Lots 56 to 65 both inclusive, 72 to 91 both inclusive, and 98 to 107 both inclusive (said lots being hereinafter referred to as "lots comprising Section 2") until the provisions of Article III, Sections 1, 2 and 3 have been complied with by the party of the first part. It is understood and agreed, however, that the party of the second part and his organization has for sale property other than that herein described, and will, from time to time, acquire other properties for sale, and nothing herein contained shall limit the number or location of other properties which the second party or his organization may acquire for sale or become selling agents for, or prevent employment of salesman or sales managers by the second party for the sale of other properties. All salesmen, sales managers, and sales directors employed by the second party shall be employed in his name and be paid by him, and the second party hereby agrees to save, protect and hold harmless the first party against
37 all claims, whether or not such claims are justified, arising out of non-payment of a commission to any of said employees.

Section 2. The powers hereby delegated to said manager in effecting sales of lots and making conveyance of various lots to various purchasers shall be as follows:

(a) To assume and exercise the management and control of the property held in trust by Chicago Trust Company, as trustee, for the purpose of disposing of said property, subject to the terms and conditions hereinafter set forth.

(b) To employ, and at his own expense, a sales organization, clerks, and such other assistants as he may deem necessary for the sale of said property.

(c) To select and approve purchasers for any of said lots, both as to character and financial responsibility, and to enter into contracts with said purchasers in the name of the trust

of which Chicago Trust Company is trustee, as aforesaid, and to execute such contracts as "manager" of said trust. Such contracts, however, shall be only upon terms as hereinafter specified. Said Chicago Trust Company may itself execute such contracts if the party of the second part desires it to do so.

(d) To request the trustee to execute deeds and such other instruments as are necessary in the sale and conveyance of said property.

(e) To consent, in the name of said trust and in his own discretion, to assignments by any purchasers of their interest under any of said contracts.

The said trust created by said deed in trust and trust agreement has been and is hereby designated as Main St. and Lincoln Ave. Realty Trust

Article V.

Section 1. The second party shall prepare the contract of purchase and shall execute same with the purchasers of lots, but in the name of the trust of which Chicago Trust
38 Company is trustee as aforesaid, by the party of the second part as manager of said trust. If said second party so desires, said contract may be signed by said Trustee as vendor. The form of the contract to be used for purchasers of any of said property shall be substantially in the form now used by the second party in selling property in and about the Village of Niles Center, Illinois, and a form of one of said similar contracts is hereto attached and marked "Exhibit A". Said contract shall include an agreement by the trust estate to furnish the purchaser a guarantee policy in the amount of the purchase price issued by the Chicago Title and Trust Company and a lot described in said contract or contracts, Torrens certificate, where the lot or a portion thereof is registered, for each and to install, by private contract or cause to be installed by special assessment, and without expense to the purchaser and at the expense of the trust estate, sidewalks in front of all lots in said subdivision and along the street side of corner lots.

The contract or contracts shall, unless otherwise agreed between the parties hereto, contain conditions and restrictions to be also included in the deed substantially as shown in said Exhibit A, except that the 15 foot building line shall be only on Lots 28 to 107 in said subdivision, and on lots in said resubdivision and except that the lots to be restricted to resi-

dence purposes, and so forth, as provided in clause No. 4th of said restrictions in said contract shall be Lots 17 to 107 both inclusive, and any resubdivision of a portion of them as herein contemplated, the lots on which business or other uses are permitted being Lots 1 to 16, both incusive, and Lot 108 in said subdivision.

Section 2. The sales price of each lot shall be not less than the price shown in the annexed sales plat hereto attached
39 and marked "Exhibit B", provided that in the event the party of the second part desires to sell at a lower price and adjust his commission so that the principal of the net sales price to be realized, after deducting the commission, is the same as would have been realized if the sale had been at the plat price and the full commission had been deducted, then the party of the second part shall have the right to sell at such lower price and said sales price, except as aforesaid, shall not be reduced below the amount shown on the said plat, except with the consent of the party of the first part.

Article VI.

The regular terms upon which sale of said lots shall be made shall be an initial payment of an amount equal to not less than twenty-five per cent. (25%) of the total sales price of each lot at the time the contract for said lot is executed. The balance of said sales price for said lot shall be in monthly installments, each for an amount equaling one per cent. (1%) of the sales price payable over a period of not exceeding thirty-nine (39) consecutive months, and a final payment of the balance of the purchase price on the last month but not exceeding the fortieth month. Interest at the rate of six per cent. (6%) per month shall be payable monthly on each installment and semi-annually on the entire balance remaining from time to time unpaid. The party of the second part may sell on other terms of sale, such as making the principal payments and the interest fall due quarterly or semi-annually, and in such case the interest may be made to fall due quarterly or semi-annually respectively, provided that in no case shall the total principal payments falling due each six
40 months be less than the amount which would have been realized if the contract were made on a basis of payments of one per cent. (1%) per month, and that in no event shall the payment of the entire balance fall due in less than forty (40) months from the date of the contract. If desired by the party of the second part, the contracts may be made so that the payments subsequent to the down-payment by the pur-

chaser may be a fixed sum each month, for not to exceed thirty-nine (39) months, which sum shall include principal and interest at the rate of six per cent (6%) monthly on the unpaid balance from time to time remaining unpaid, payable monthly, and which sum shall be not less than one and one-fourth (1-1/4) per cent. of the purchase price, with a final payment of the balance of entire purchase price on the last month, but not exceeding the fortieth (40) month. In the event the sales are made on terms of one and one-half per cent (1½%) or more of the principal per month after the down-payment, then the interest may be made payable on each installment of the balance of the contract as it falls due. A discount of five per cent (5%) of the sales price of any lot sold may be granted to the purchaser thereof if he pays the total consideration for said lot in cash within thirty (30) days from the time of the purchase, and a discount of one per cent. (1%) per annum from date of payment to the date the final payment is due on the entire balance remaining unpaid may be allowed to the purchaser if, after the making of the contract, he pays the balance of the purchase price in advance. The second party shall have the right to take notes or other consideration for such portion of the purchase price as represents his commission, provided that there shall be left in the down or initial payment at least six per cent. (6%) in cash of the purchase price.

41 Article VII.

The party of the first part further covenants and agrees that the party of the second part shall have the sole right of possession of the premises during the term of this contract. If it shall be deemed necessary in the opinion of the second party that any of said land be cleared of rubbish, brush or any other growth or obstruction, the work of clearing said land shall be done at the cost and expense of said first party. Any buildings on any portion of the premises herein described, or the streets or alleys thereof, shall be removed by the first party at his expense within fifteen (15) days from the date hereof, provided that it is understood and agreed that one, Losch, has a lease on certain buildings expiring on November 1, 1925, and to be terminated thereafter on sixty (60) days' notice. The party of the first part shall have given the required sixty (60) days' notice to said Losch, so as to terminate said lease not later than January 1, 1926, and said buildings so under lease to said Losch shall be removed by the party of the first part at his expense not later than

January 15, 1926. The second party shall also have the right to stake out and put number stakes on said subdivision for the purpose of sale, the cost thereof to be paid by the party of the first part.

The second party may, at his own cost and expense, erect an office on said property, and hereby agrees to pay for said office and to hold harmless the first party and said property from any claim or lien by any contractor or material man on account of construction of said office, and further agrees to remove said office from said property at the termination of said contract.

The second party agrees, at his own cost and expense, to advertise the sale of the said premises in such mediums
42 and in the manner he deems necessary, and to use his name and/or the name of his firm in a manner that will produce sales of lots in said subdivision.

Article VIII.

It is expressly understood and agreed that the rights of all parties hereunder shall be subject and subordinate to the rights of any and all purchasers of said lots in said subdivision and/or in said resubdivision (if made), and no termination of this agreement shall in any way affect the rights of any of said purchasers of lots in said subdivision, and all parties agree to respect the rights of said purchasers. It is further agreed that upon the performance by the purchaser of any lot of the covenants by him to be performed under his contract, said party of the third part shall, at the request of said purchaser or of the party of the second part convey said lot to said purchaser and deliver to said purchaser a guarantee policy guaranteeing the title of the trustee to said lot in the amount of the purchase price, and if any portion of the property is registered under the Torrens system, to furnish to the said purchaser a Torrens certificate of title to said lot or such portion thereof so registered, issued by the Registrar of Titles of Cook County, Illinois, showing good title in the purchaser, as provided in the contract. The cost of such guarantee policy and/or Torrens certificate to be paid by the party of the first part.

Article IX.

And it is expressly understood and agreed that upon the written direction of the party of the second part said Chicago Trust Company, as trustee under the trust hereinbefore

mentioned, will convey said lot to said purchaser. Said Chicago Trust Company, as such trustee, shall also, at the
43 written direction of the party of the second part, contract for or give consent on behalf of said property for the use of any street, alley, park or public place for railroad, street, gas or electric conduits, pipe lines or other equipment or other public or semi-public improvements, or shall petition any municipal corporation for the construction of any sidewalk, street or other public improvements, and such written direction from the party of the second part to said trustee directing the execution of any instrument provided for in this article shall constitute full and complete authority for the trustee hereunder to execute such instruments or perform the acts provided to be performed by it.

Nothing herein contained shall be construed as imposing any personal liability of any nature or kind whatsoever upon the trustee for any acts performed by it as the trustee hereunder in accordance with the terms hereof, nor for any acts, contracts or agreements of the manager hereunder. The trustee shall promptly notify the manager and the first party of any suit brought or made against it arising out of the trusteeship thereby created.

Said party of the third part shall execute the contracts of purchase, if so desired by the party of the second part.

Article X.

The party of the second part may, at his discretion, and shall, upon the written request of the party of the first part, or the party of the third part take such steps as are required under the terms and provisions hereof and/or under the terms and provisions of any contracts of sale theretofore executed, which the vendor is entitled to forfeit by reason of any
44 default or defaults on the part of the vendee therein named, to cause a forfeiture of any of such contracts of sale, and in the event any resale is made of such lots by the party of the second part, as manager of this trust, his compensation shall be governed by the terms of this agreement. The party of the third part may also and shall, at the request of the party of the second part, consent to the assignment by purchasers of lots in said Main St. and Lincoln Ave. Subdivision aforesaid of their interest in said contracts.

Article XI.

Section 1. The rights of the second party under this agreement shall constitute an exclusive sales agreement, which exclusive sales agreement shall continue for a period of nine (9) months from the time the party of the second part is required to commence making sales of lots in Section 1 under the terms of this agreement, and as to lots in Section 2, for a period of nine (9) months from the time party of the second part is required to commence making sales of lots in Section 2 under the terms of this agreement, provided that the party of the second part shall nevertheless have the right, if he so desires, to commence sooner making sales of lots in Section 2 or any of them, except as to Lots 62, 63, 74, 75, 88, 89, 100 and 101.

Section 2. As compensation for his services in making such sales the party of the second part shall receive a commission of thirty-three and one-third per cent. (33-1/3%) of the gross selling price of each lot, payable only out of moneys realized from the sales of said lots in the manner following:

(a) Where a lot is sold for cash the party of the sec-
45 ond part shall receive his entire commission in cash.

(b) On other sales, the party of the second part shall receive the down-payment, such down-payment not to exceed twenty-five per cent. (25%) of the purchase price; and out of any excess of the down-payment above twenty-five per cent. (25%) of the sales price, and out of each subsequent payment the party of the second part shall receive forty per cent. (40%) of the same, until and when he shall have received his entire commission of thirty-three and one-third per cent. (33-1/3%) on each contract of sale. The party of the second part shall also receive twenty per cent. (20%) of the interest due monthly on each installment contract until such time as he shall have received the entire commission of thirty-three and one-third per cent. (33-1/3%) out of the down-payment and principal of the subsequent payments.

(c) The party of the second part has, at the time of the execution of this agreement, advanced to or for the party of the first part the sum of Five Thousand Dollars ($5,000.00), of which Twenty-six Hundred Fifteen Dollars ($2615.00) has been paid to the party of the first part in cash, receipt whereof is by him hereby acknowledged, and the remaining Twenty-three Hundred Eighty-five Dollars ($2385.00) has been deposited by the party of the second part with the party of the third part, for the use and benefit of the party of the

first part, for the purpose of meeting and paying the semi-annual interest of Nine Hundred Seventy-five Dollars ($975.00) due December 11, 1925, on the encumbrance of Thirty-Two Thousand Five Hundred Dollars ($32,500.00) to Fernando J. LeBau, Trustee, as aforesaid, also the semi-annual interest of Nine Hundred Seventy-five Dollars ($975.00) due January 11, 1926, on the encumbrance of $32,000.00, to Titus L. Thelin, Trustee, and also the semi-annual interest of Four Hundred Fifty Dollars ($450.00) due January 11, 1926, on the encumbrance of $15,000.00, to Stephen S. Losch, Trustee. The party of the third part is hereby authorized and directed to pay said sums of interest on said respective encumbrances as and when the same fall due. Said sum of Five Thousand Dollars ($5,000.00), so advanced by the party of the second part, shall be repaid to him by the party of the third part out of the remaining sixty-six and two thirds per cent. (66-2/3%) of any cash sales and out of sixty per cent. (60%) of principal and the share of the interest due the party of the first part from payments on sales contracts subsequent to the down or initial payment as and when monthly statements and accountings are rendered by the party of the third part.

Section 3. It is further agreed that upon the expiration of said exclusive agency, as herein provided, the first
46 party may withdraw from said trust agreement any of the lots in said subdivision that remain unsold at the date of withdrawal, but any such lots so withdrawn shall be subject to the building line and other restrictions which are provided in this agreement, or in the contracts of sale. If said lots are not so withdrawn. and until the time they are so withdrawn, the second party may continue the sale of same, and any sales made shall be subject to the terms of this agreement. From the time of the withdrawal of any such lots, this agreement shall, however, continue as to sales of lots made prior to said withdrawal, and as to collections made from any such sales.

Article XII.

Section 1. All costs of survey, subdivision, platting, fees of trustees, fees for collection, costs and expenses in connection with forfeiture of contracts, expenses of putting said real estate in shape for sale, such as staking, putting in number stakes, levelling, and so forth, for cement sidewalks, as provided in this agreement, guarantee policy, Torrens certificate costs and other expenses in connection with this agree-

ment (except the selling expense which shall be paid by the party of the second part, out of his commission) shall be paid by the party of the first part.

Section 2. Party of the first part shall also promptly pay and discharge all principal and interest from time to time falling due on the three mortgages hereinbefore described which are now upon said real estate or parts thereof, and shall hold and save harmless the parties of the second and third part, the said property, and any purchasers of lots, of and from any and all claims, demands, causes of action, costs, expenses, and attorney's fees in connection with said mortgages and/or in connection with any suits brought against any such parties or against such property by reason of any matters or things arising out of said mortgages or any of them.

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Section 3. For the purpose of paying the principal payments on said three mortgages, and of paying all interest due on the same after the payment of the first semi-annual interest on each of said three mortgages, (for which latter interest deposit has been made with the Trustee, as aforesaid), and for the purpose of paying the cost of sidewalk improvements and for the purpose of paying all other items required hereunder to be paid by the party of the first part, as in this agreement provided, the said party of the third part, the Trustee herein, shall withhold out of the portion of the excess over the first twenty-five per cent. (25%) of the sales price of said lots and out of the share of first party in any cash sales, after the re-payment of the sum of Five Thousand Dollars ($5,000.00) advanced by the party of the first part, as aforesaid, the share of the party of the first part in the principal and interest on such "subsequent payments", until such time as said reserve is sufficient to pay all of the above items so required to be paid by the party of the first part, and said trustee shall, at the order of the party of the first part, from time to time use and apply any sums so retained in payment of any of the matters or things, including the principal and interest of the mortgages for which said sums are so held in reserve.

Section 4. On the refusal or failure of the party of the first part to cause said sums to be applied as aforesaid, on any of said items, including the principal and interest of said mortgages as and when the same are required to be paid, said trustee may itself, and shall at the direction of second

party, pay such sums out for such purposes. Said party
48 of the second part shall also have the right, at his option (but shall not be required so to do) to advance any moneys from time to time for any of said items, including principal and interest on said mortgages, required to be paid by the party of the first part, and any money so paid by him shall bear interest at seven per cent. (7%) per annum from the date of each advancement by the party of the second part and shall be repaid to him, on demand, by the party of the first part, and shall be refunded to him by said trustee at his request, out of said reserve, upon evidence of payment of same, and the party of the second part shall have a lien upon the interest of the party of the first part under this agreement, and the trust hereby created, for said sum of Five Thousand Dollars ($5,000.00) so advanced by him, as aforesaid, and for any other moneys advanced by him from time to time for any of the purposes aforesaid.

Section 5. The sidewalk improvements herein specified shall be made within two years from the commencement of sales by the party of the second part.

Section 6. The party of the second part shall have an interest in each contract of sale made by him pro tanto in accordance with the provisions of this agreement and shall have the right to place a notice on each original contract of such interest.

Section 7. The interest of the party of the first part under this agreement shall always (subject to the rights of purchasers of said lots) be security for the payment of all moneys due for principal and interest on the encumbrances hereinbefore mentioned, as and when the same fall due.

49 Article XIII.

Section 1. Said party of the second part shall collect the down or initial payment on any contract, retaining the portion to which he is entitled, and paying the balance to the trustee herein for distribution, as herein provided. He shall, in the same manner, collect the payment when the entire purchase price is paid in cash, and likewise disburse the same, as aforesaid.

Section 2. Said trustee shall collect all the other moneys paid in by purchasers of each lot from time to time, and retain and disburse the same, in accordance with the provisions of this agreement.

Section 3. Said trustee shall keep such books and records

as are necessary and proper, showing the name and address of each purchaser of lots, the amount of the contract, all payments made under the terms of same, the balance due from time to time thereunder, and any other data necessary, and shall, if necessary, send a notice to each purchaser of the amount of each installment falling due and the interest thereon.

Section 4. Said trustee shall distribute said moneys as required by the terms of this agreement and shall withhold the amount of reserve hereunder required, and shall distribute, apply and pay out said reserve as provided by this agreement.

Section 5. One of the signed contracts for the sale of said lots shall be delivered to and held by said trustee, and a copy delivered to the party of the second part.

Section 6. Said trustee shall make distribution of all collections made by it during any month to the respective beneficiaries hereunder on the 10th day of the following month, and shall deliver to each of the parties of the first and second part a statement of such collections showing the person from whom collected, the date and amount thereof, the lot and block number of each lot, so that the parties may be able to ascertain from such statements the amount to date paid by purchasers on each lot on any of said contracts.

Section 7. As compensation for its services as such trustee, said party of the third part shall receive a compensation of Three and one-half per cent. (3½%) of the amount of the moneys collected or received by it, which shall be paid promptly by the party of the first part or may be deducted by said trustee from any amounts due the party of the first part or from said reserve. It is understood, however, that should the interest of the party of the second part be terminated hereunder in any way or become a matter of dispute between the parties hereto, then the reasonable fees of the trustee for its ordinary services hereunder as well as its fees for services rendered in connection with any litigation or controversy involving the trustee or this trust estate, together with its costs and expenses, including attorneys' fees, may be deducted and withheld from any part of the trust estate, or collections therefrom, in its hands, without regard to which parties hereto may be entitled otherwise to said part or parts.

Article XIV.

This agreement shall not be construed as creating a partnership, and shall not be placed of record.

Article XV.

This agreement shall be binding upon and inure to the
51 benefit of the heirs, executors, administrators and assigns of the respective parties hereto. Each of the beneficiaries hereunder (the parties of the first and second part) shall have the right to assign their respective interest or interests or any part thereof under this agreement and/or in their respective interests in the contracts of purchase, but the party of the second part shall not assign his right to act as exclusive sales agent hereunder, except if such assignment be to the A. A. Lewis Realty Association, or a corporation formed to take over the business of the said A. A. Lewis Realty Association.

Article XVI.

The attached amendatory agreement is part of the within agreement.

In Witness Whereof. the said parties have hereunto set their hands and seals the day and year first above written.

(Signed) MINERVA S. MELIDONES (Seal)
A. A. LEWIS (Seal)
CHICAGO TRUST COMPANY as Trustee under Trust No. 1523 aforesaid. (Seal)
By W. F. HOPKINS
Vice President.

Attest:
BURT A. BOWLBY
Asst. Secretary.

52 Whereas an agreement has been prepared, dated the 12th day of December, 1925, between Minerva S. Melidones, party of the first part, Albert A. Lewis, party of the second part, and Chicago Trust Company, a Corporation, as Trustee under the provisions of a certain trust agreement dated the 12th day of December, A. D. 1925, and known as Trust No. 1523, party of the third part, and it is desired to amend said agreement before the execution of same withont revising or re-writing the same,

Now, Therefore, at the time of the execution of said first-mentioned agreement, and as part of the same, it is agreed as follows:

First: The party of the first part represents that she has already acquired title to said sixteen and five-tenths (16.5) foot strip referred to in Article One (1) of the first-mentioned agreement, and it is understood that a separate sub-division may be made of said strip alone into Lots A, B, C, and D, without joining it in a resubdivision with lots in the subdivision of the remaining property already made. Said subdivision may be made by the party of the first part before the conveyance of said strip to the party of the third part, in which event such conveyance may be made by the description of lots in the subdivision of the strip. If the subdivision of said strip is not made by the party of the first part before conveyance to the party of the third part, then the subdivision plat of said strip alone into Lots A, B, C and D, as directed by the party of the second part shal be executed by the party of the third part, after conveyance of the strip to it. All provisions of the first-mentioned agreement, with reference to a resubdivision of said strip with other lots shall apply to
53 the original subdivision of said strip alone as fully and effectually as though it were described as a subdivision of said strip in said agreement in every place where reference thereto is made.

Second: The advance of Five Thousand Dollars ($5,000.00) by the party of the second part to the party of the first part referred to in Article Eleven (XI), Section Two (2), Subdivision "c" of the agreement first-mentioned in this document, has not been made and said agreement is hereby modified and amended in the following respects:—

(a) Out of the down payment or the first Twenty-five per cent. (25%) of the sales price (if it exceeds Twenty-five per cent. (25%), the party of the second part shall retain Nineteen per cent. (19%) of said sales price. The remaining Six per cent. (6%) is to be paid to the Trustee and held by it and applied and used for the purpose of meeting the principal and interest payments on the three (3) mortgages, and all other items provided in Article Eleven (XI), Section Three (3) of said first-mentioned agreement, and the share of party of the first part in the principal and interest on the payments subsequent to the down payment shall likewise be applied to said reserve and used as in said agreement provided. In all other respects said agreement shall remain in full force and effect and is only modified as herein expressly provided.

Witness the hands and seals of said parties this 12th day of December, A. D. 1925.

MINERVA S. MELIDONES (Seal)
A. A. LEWIS (Seal)
CHICAGO TRUST COMPANY, as Trustee under Trust No. 1523 as aforesaid,
By W. F. HOPKINS,
Vice President.
(Seal)
Attest:
BURT A. BOWLBY,
Asst. Secretary.

1935. 8 UNTIED STATES BOARD OF TAX APPEALS.

• • (Caption—75010) • • •

Trust under which a trustee held title to real estate during the subdivision thereof held not an association.

Commissions on sales of lots, held properly treated as expenses.

Franz W. Castle, Esq., and *Raymond A. Guggan, Esq.*, for the petitioner.

B. M. Coon, Esq., and *John W. Smith, Esq.*, for the respondent.

MEMORANDUM OPINION.

ARUNDELL: The respondent determined a deficiency in income in the amount of $512.30 for the year 1931. Petitioner alleges error in respondent's classification of the trust herein as an association and in the use of an improper accounting method to determine income.

On December 12, 1925, Minerva S. Melidones, hereinafter called the grantor entered into two agreements respecting certain real estate owned by her in the Village of Niles Center, Cook County, Illinois. One of the agreements, designated "Declaration of Trust" provided for the placing of title in the Chicago Trustee Company (predecessor of Centrxl Republic Trust Company) as trustee "for the ultimate use and benefit of" the grantor and A. A. Lewis. The trust so created was known as Trust Number 1523. The trust instrument provided that, while the trustee had full power to deal with the real estate so far as the public was concerned, it was
9 agreed by the parties that it would do so only in accordance with the agreement attached thereto.

The agreement attached to the trust instrument, dated December 12, 1925, was executed by the grantor and the trustee above mentioned and by A. A. Lewis. Lewis was an experienced real estate man who specialized in the subdivision of land in the vicinity of Niles Center, Illinois. Under the agreement Lewis was appointed exclusive selling agent of the land which was to be subdivided into lots. The grantor appointed Lewis "manager of the trust created by said deed in trust and trust agreement aforesaid". The grantor delegated to Lewis "such powers and duties in connection with administration of the trust as may be necessary to facilitate the sale of the said land". Among the powers specifically delegated to Lewis were the following: to exercise management and control of the trust property for the purpose of selling it; to employ, at his own expense, a sales organization; to select and approve purchasers for the lots, both as to character and financial responsibility, and to enter into contracts with the purchasers in the name of the trust as "manager" of said trust; to request the trustee to execute deeds and other necessary instruments. Lewis agreed, at his own expense, to advertise the property for sale. The trustee agreed to convey title to purchasers of lots upon the written direction of Lewis.

As compensation for his services Lewis was to receive 33⅓ per cent of the gross selling price of each lot. On cash sales he was to retain his entire commission in cash. On deferred payment sales he was to retain the down payment, but not to exceed 25 per cent of the selling price, and out of subsequent payments he was to receive 40 per cent of each payment until the total received amounted to 33⅓ per cent of the selling price.

Lewis was to collect the initial payments on deferred payment sales. All subsequent payments were to be collected by the trustee. The trustee was to receive 3½ percent of collections made by it.

All costs of surveying and subdivision, fees for collection, expenses of putting the real estate in shape for sale and putting down cement sidewalks were to be borne by the grantor. For the purpose of meeting such expenses the trustee was to retain a portion of the collection made by it, which would otherwise go to the grantor, and to apply the fund so accumulated to the payment of such expenses.

The trust here involved is in all substantial respects like those in *Highlands, Evanston-Lincolnwood Subdivision, First Addition, Trust No. 1546, Central Republic Trust Company as Successor by Consolidation*, 32 B. T. A. ....., in which upon

analysis of the form and operation of the trusts we held that they were not to be classified as associations. The facts in the present case are in some respects more favorable to the petitioner than in the cited cases. Here there was but one grantor, no certificates of interest were issued, although the trust agreement provided that they might be, and the powers and duties of the trustee were even more limited than in the above cases. There was not in this case any group of persons corresponding to stockholders in a corporation nor to corporate directors. Following the *Highlands, Evanston-Lincolnwood* cases we hold that the trust here was not an association.

The other question has to do with the method of computing income from the sale of lots. No evidence was offered on this matter. All we have to go on is the deficiency notice and the arguments of counsel. From these it appears that the respondent treated the commissions to Lewis as decutions from gross income, rather than treating them as reductions of selling price as contended for by petitioner. Respondent's action in this respect is in accordance with Article 352, Regulations 74.

11 We have no facts in this case to which to apply any decision made on this question but aside from this, petitioner has not convinced us of any error either in the provision of the cited Article of the Regulations or the respondent's application thereof.

Decision will be entered under Rule 50.

Entered
Jun. 14, 1935
(Seal)

12 UNITED STATES BOARD OF TAX APPEALS.

8, 1935.

* * (Caption—75010) * *

DECISION.

Pursuant to the memorandum opinion entered June 14, 1935, the respondent herein on July 1, 1935, having filed a notice of settlement and proposed recomputation, and the petitioner herein on July 15, 1936, having filed an acquiescence in said recomputation, it is

Ordered and Decided: That there is no deficiency in income tax for the year 1931.

Enter:

(Signed) C. ROGERS ARUNDELL,
Member.

mob
Entered Jul 18 1935.

18 IN THE UNITED STATES CIRCUIT COURT OF APPEALS. Filed Oct.

* * (Caption—75010) * *

NOTICE OF FILING PETITION FOR REVIEW.

Filed Oct. 18, 1935.

To: A. A. Lewis & Co., Main & Lincoln Ave., Subdivision Trust #1623, Central Republic Trust Co., et al, 208 S. LaSalle Street, Chicago, Illinois.
Raymond A. Duggan, 35 E. Wacker Drive, Chicago, Illinois.

You are hereby notified that the Commissioner of Internal Revenue did, on the fourteenth day of October, 1935, file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Seventh Circuit, of the decision of the Board heretofore rendered in the above-entitled case. A copy of the petition for review and the assignments of error, as filed, is hereto attached and served upon you.

Dated this fourteenth day of October, 1935.

(Signed) ROBERT H. JACKSON,
Robert H. Jackson,
Assistant General Counsel for the Bureau of Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of errors mentioned therein, is hereby acknowledged this 15th day of October, 1935.

CENTRAL REPUBLIC TRUST CO.,
By T. J. FINWELL,
Respondent on Review.
WILLIAM J. FLAHERTY, for Wm. L. O'Connell, Rec.,
Counsel for Respondent on Review.

1935. 13 IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

* * (Caption—75010) * *

PETITION FOR REVIEW AND ASSIGNMENTS OR ERROR.

Filed Oct. 14, 1935.

To the Honorable Judges of the United States Circuit Court of Appeals for the Seventh Circuit:

Now Comes, Guy T. Helvering, Commmissioner of Internal Revenue, by his attorneys, Frank J. Widean, Assistant Attorney General, Robert H. Jackson, Assistant General Counsel for the Bureau of Internal Revenue, and B. M. Coon, Special Attorney, Bureau of Internal Revenue, and respectfully shows:

I.

The petitioner on review is the duly appointed and qualified Commissioner of Internal Revenue, holding his office by virtue of the laws of the United States. The respondent on review, the taxpayer, is A. A. Lewis and Company, Main and Lincoln Avenue Subdivision, Trust #1523.

Central Republic Bank and Trust Company, as trustee for A. A. Lewis and Company, Main and Lincoln Avenue Subdivision, Trust #1523, through its trust officer, Roy K. Thorne, filed a fiduciary return Form 1041, and no other return of the income of said trust for the year 1931, with the Collector of Internal Revenue in the First Collection District for the State of Illinois, whose office is located within the jurisdiction of the United States Circuit Court of Ap-

14 peals for the Seventh Circuit.

II.

The Commissioner of Internal Revenue returned deficiency in income tax against said trust for the year 1931 in the amount of $512.30, and on January 3, 1934, in accordance with the provisions of Section 272 of the Revenue Act of 1928, sent to the respondent herein a notice of such deficiency.

On March 5, 1934, the taxpayer filed with the United States Board of Tax Appeals its petition whereby it appealed from the said tax notice of deficiency to the said Board. The ap-

peal bears Docket No. 75010. The Board promulgated its Memorandum Opinion in the case on June 14, 1935, and entered its decision and final order on July 18, 1935, holding and deciding that taxpayer was not an association, taxable as a corporation.

The question in the case is as follows: Is a trust or an association taxable as a corporation created under the following circumstances: The owner of undeveloped acreage land enters into a written agreement with an experienced subdivision developer and a trust company pursuant to which legal title is transferred to the trust company, and the property is subdivided and so under the management of the subdivision developer, all parties signing an agreement outlining the plan of business which by reference is a part of the Trust Instrument?

III.

Minerva S. Melidones, owner of undeveloped acreage real estate, for the purpose of subdividing and selling the same simultaneously entered into the written agreements affecting the property. One of the agreements, designated "Declaration of Trust", provided for the placing of title in the Chicago Trust Company (predecessor of Central Republic Trust Co.) as trustee for the ultimate use and benefit of "the grantor and A. A. Lewis". The trust so created was known as Trust #1523. The trust agreement stipulated among other things that the trustee "will hold it (the real estate) and the proceeds, profits, and avails thereof, if any, which may come to its hands by direction of the beneficiary or beneficiaries or by the specific terms thereof, in trust for the ultimate use and benefit of the following named persons according to the respective interests herein set forth, to-wit, Minerva S. Melidones, A. A. Lewis, as shown by the attached agreement." The trust agreement provided that it should not be recorded. A. A. Lewis was designated therein as Manager of the trust and trust agreement aforesaid irrevocably for a term as hereinafter provided." The attached agreement was signed by the owner-grantor, agent-manager, and the trustee and is a full and detailed contract relative to the subdividing, handling and selling of the real estate.

The above described trust is an organization composed of "beneficiaries", and "agent" and a "trustee", voluntarily united in a business enterprise engaged in the real estate business for profit under a so-called declaration of trust which

provides for beneficial interests in the business that are transferable as personal property, the management of the enterprise being vested in a Board of Managers having power and responsibility like that conferred upon corporate directors, which managers by joint action of the trustee and the beneficiaries conduct a business pursuant to the purpose for which the association was created in the manner set forth in the declaration of trust.

The trustee does not merely collect the income. Article V of the Trust Agreement provides that the Chicago Trust Company, as trustee, shall subdivide and plat the property.

Article XIV of the said instrument provides that the trus-
16 tee shall convey the lots of the subdivided property to the purchasers thereof who have complied with the provisions of their contract. Furthermore, the sale contract specifies that the trustee shall furnish cement side walks in front of each lot and along the street sides of each corner lot.

It is an association within the meaning of Section 701(a)(2) and (5) of the Revenue Act of 1928, Section 704 (a) and (b) of the Revenue Act of 1928 and Regulations 74, Articles 1312 and 1314.

IV.

The petitioner herein, the Commmissioner of Internal Revenue, shows that he is aggrieved by the action of the said United States Board of Tax Appeals and injured thereby, and that the errors complained of are as follows:

1. The Board of Tax Appeals erred in finding, holding and deciding that the enterprise formed by the trust agreement dated December 12, 1925, and known as Trust No. 1523, was not an association under Section 701(a)(2) of the Revenue Act of 1928.

2. The Board of Tax Appeals erred in not finding, holding and deciding that the said enterprise was an association under said Section 701(a)(2) of the Revenue Act of 1928.

3. The Board of Tax Appeals erred in construing the evidence as determining that the said Trust No. 1523 was a mere fiduciary and/or trust created primarily for the purpose of affording security to a small group of subscribers of funds to a real estate corporation.

4. The Board of Tax Appeals erred in finding, holding and

deciding contrary to the evidence that the so-called Trust No. 1523 was a mere trust and not an association.

17 5. The Board of Tax Appeals erred in deciding the case for the taxpayer contrary to the evidence.

6. The Board of Tax Appeals erred in that the findings of fact are not based upon any substantial evidence.

Wherefore, the Commissioner petitions that the decision of the Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for the Seventh Circuit, that a transcript of the record be prepared in acordance with law and with the rules of said Court and transmitted to the clerk of said Court for filing, and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by said Court.

(Signed) FRANK J. WIDEMAN,
Frank J. Wideman,
Assistant Attorney General.

(Signed) ROBERT H. JACKSON,
Robert H. Jackson,
Assistant General Counsel for the Bureau of Internal Revenue.

Of Counsel:
B. M. COON,
Special Attorney, Bureau of Internal Revenue.

United States of America, }
District of Columbia. } ss.

B. M. COON, being duly sworn, says that he is a special attorney of the Bureau of Internal Revenue, and as such is duly authorized to verify the foregoing petition for review; that he has read said petition and is familiar with the contents thereof; that said petition is true of his own knowledge except as to the matters therein alleged on information and belief, and as to those matters he believes it to be true.

B. M. COON,
Special Attorney Bureau of Internal Revenue.

Sworn and subscribed to before me this 14th day of October, 1935.

GEORGE W. KIERS,
(Seal) *Notary Public.*

My commission expires Nov. 16, 1937.

56 UNITED STATES BOARD OF TAX APPEALS.

* * (Caption—75010) * *

ORDER ENLARGING TIME.

On motion of counsel for the petitioner, it is

Ordered: That the time of preparation of the evidence and transmission and delivery of the record sur petition for review of the above entitled proceedings in the United States Circuit Court of Appeals for the Seventh Circuit, be and it is hereby extended to April 1, 1936.

(Signed) EUGENE BLACK,
Member.

Dated: Washington, D. C.,
Dec. 4, 1935.
jd

Now, July 21, 1936, the foregoing order enlarging time certified from the record as a true copy.

B. D. GAMBLE,
(Seal) *Clerk, U. S. Board of Tax Appeals.*

57 UNITED STATES BOARD OF TAX APPEALS.

* * (Caption—75010) * *

ORDER ENLARGING TIME.

On motion of counsel for the petitioner, it is

Ordered: That the time for preparation of the evidence and transmission and delivery of the record sur petition for review of the above entitled proceedings in the United States Circuit Court of Appeals for the Seventh Circuit, be and it is hereby extended to June 1, 1936.

(Signed) EUGENE BLACK,
Member.

Dated: Washington, D. C.,
March 24, 1936.
jd

Now, July 21, 1936, the foregoing order enlarging time certified from the record as a true copy.

B. D. GAMBLE,
(Seal) *Clerk, U. S. Board of Tax Appeals.*

58 UNITED STATES BOARD OF TAX APPEALS.

• • (Caption—75010) • •

ORDER ENLARGING TIME.

On motion of counsel for the petitioner, it is

Ordered: That the time for preparation of the evidence and transmission and delivery of the record sur petition for review of the above entitled proceeding by the United States Circuit Court of Appeals, Seventh Circuit, be and it is hereby extended to August 1, 1936.

(Signed) EUGENE BLACK,
Member.

Dated Washington, D. C.,
May 25, 1936.

Now, July 21, 1936, the foregoing order enlarging time certified from the record as a true copy.

(Seal) B. D. GAMBLE,
Clerk, U. S. Board of Tax Appeals.

54 IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

• • (Caption—75010) • •

PRAECIPE FOR RECORD.

United States Board of Tax Appeals. Filed Jun 26, 1936.

To the Clerk of the United States Board of Tax Appeals:

You will please prepare, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, copies duly certified as correct of the following documents and records in the above-entitled cause in connection with the petition for review by the said Circuit Court of Appeals for the Seventh Circuit, heretofore filed by the Commissioner of Internal Revenue:

1. Docket entries of the proceedings before the Board.
2. Pleadings before the Board,
(a) Petition, including annexed copy of deficiency letter.
(b) Answer.
3. Opinion and decision of the Board.
4. Petition for review, together with proof of service of notice of filing petition for review and of service of a copy of petition for review.
5. Statement of the evidence as settled and allowed.

6. Orders enlarging time for the preparation of the evidence and for the transmission and delivery of the record not included in record.

7. This praecipe.

HERMAN OLIPHANT,
General Counsel for the
Department of the Treasury.

Service of a copy of the within praecipe is hereby admitted this 10th day of April, 1936.

CENTRAL REPUBLIC TRUST CO.,
WM. L. O'CONNELL, Receiver,
Attorney for Respondent.
By WM. J. FLAHERTY,
Attorney for Receiver.
By J. A. MCGEEAN.

In the presence of
WM. S. DELANEY,
Internal Revenue Agent.

 UNITED STATES BOARD OF TAX APPEALS.

* * (Caption—75010) * *

CERTIFICATE.

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 55, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 20th day of July, 1936.

B. D. GAMBLE,
(Seal) *Clerk, United States Board of Tax Appeals.*

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 46, inclusive, contain a true copy of the printed record, printed under my supervision and filed on the nineteenth day of August, 1936, upon which the following entitled cause was heard and determined:

Commissioner of Internal Revenue,
Petitioner,

vs.

A. A. Lewis and Company, Main and Lincoln Avenue Subdivision, Trust No. 1523, Central Republic Trust Company, Formerly named Central Republic Bank and Trust Company, as successor Trustee by Consolidation,
Respondents,

No. 5970, October Term, 1936, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 22nd day of January, A. D. 1937.

FREDERICK G. CAMPBELL,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

(Seal)

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United States Court Room, in the City of Chicago, in said Seventh Circuit, on the first day of October, 1935, of the October Term, in the year of our Lord one thousand nine hundred and thirty-five, and of our Independence the one hundred and sixtieth.

Commissioner of Internal Revenue
5970 *vs.*
A. A. Lewis and Company, Main and Lincoln Avenue Subdivision, Trust No. 1523, Central Republic Trust Company, Formerly named Central Republic Bank and Trust Company, as Successor Trustee by Consolidation.

Petition for Review of Decision of the United States Board of Tax Appeals.

And afterwards, to-wit: On the twenty-eighth day of July, 1936, there was filed in the office of the Clerk of this court, an appearance of counsel for Respondent, which said Appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 5970. October Term, 1935.

Commissioner of Internal Revenue

vs.

A. A. Lewis & Company, *et al.*

The Clerk will enter my appearance as counsel for Respondent.

HOWARD R. BRINTLINGER,
111 W. Washington St.
Chicago, Illinois.

Endorsed: Filed July 28, 1936. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the first day of August, 1936, there was filed in the office of the Clerk of this court, an appearance of counsel for Petitioner, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 5970. October Term, 1935.

Commissioner of Internal Revenue

vs.

A. A. Lewis & Company, *et al.*

The Clerk will enter our appearance as counsel for Petitioner.

ROBERT H. JACKSON,
Asst. Attorney General,
SEWALL KEY,
Special Asst. to the Attorney General,
Washington, D. C.

Endorsed: Filed August 1, 1936. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the twenty-eighth day of August, 1936, there was filed in the office of the Clerk of this court, an appearance of counsel for Petitioner, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 5970. October Term, 1935.

Commissioner of Internal Revenue

vs.

A. A. Lewis & Company, *et al.*

The Clerk will enter our appearance as counsel for Petitioner.

HERMAN OLIPHANT,
General Counsel, Department of the Treasury,
BYRON M. COON,
Special Attorney, Bureau of Internal Revenue,
Washington, D. C.

Endorsed: Filed August 28, 1936. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the eighth day of September, 1936, there was filed in the office of the Clerk of this court, an appearance of counsel for Petitioner, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 5970. October Term, 1935.

Commissioner of Internal Revenue

vs.

A. A. Lewis & Company, *et al.*

The Clerk will enter my appearance as counsel for Petitioner.

ELLIS N. SLACK,
Special Assistant to the Attorney General,
Washington, D. C.

Endorsed: Filed Sept. 8, 1936. Frederick G. Campbell, Clerk.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United States Court Room, in the City of Chicago, in said Seventh Circuit, on the sixth day of October, 1936, of the October Term, in the year of our Lord one thousand nine hundred and thirty-six, and of our Independence the one hundred and sixty-first.

And afterwards, to-wit: On the eighteenth day of November, 1936, the following further proceedings were had and entered of record, to-wit:

Wednesday, November 18, 1936.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. Walter C. Lindley, District Judge.
Hon. Charles G. Briggle, District Judge.

Commissioner of Internal Revenue
5970 *vs.*
A. A. Lewis and Company, Main and Lincoln Avenue Subdivision, Trust No. 1523, Central Republic Trust Company, Formerly named Central Republic Bank and Trust Company, as Successor Trustee by Consolidation.

Petition for Review of Decision of the United States Board of Tax Appeals.

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel and on oral arguments by Mr. Ellis N. Slack, counsel for petitioner, and by Mr. Franz W. Castle, counsel for respondent.

On Consideration Whereof: It is now here ordered and adjudged by this court that the Decision entered in this cause on July 18, 1935, by the United States Board of Tax Appeals, be, and the same is hereby reversed; and that this cause be, and the same is hereby remanded to the said United States Board of Tax Appeals.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing Printed pages, numbered from 49 to 53, inclusive, contain a true copy of the proceedings had and papers filed (excepting Briefs of counsel) in the case of

Commissioner of Internal Revenue,

Petitioner,

vs.

A. A. Lewis and Company, Main and Lincoln Avenue Subdivision, Trust No. 1523, Central Republic Trust Company, Formerly named Central Republic Bank and Trust Company, as successor Trustee by Consolidation,

Respondents,

No. 5970, October Term, 1936, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 22nd day of January, A. D. 1937.

FREDERICK G. CAMPBELL,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

(Seal)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 29, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.